IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 5697 of 2007(C)

PETITIONER:

E.M.PAULOSE, AGED 61 YEARS,
S/O. MATHAI, RAILWAY CONTRACTOR,
EDAPPILLYMATTATHIL, MULANTHURUTHY P.O.,
ERNAKULAM DIST., PIN-682 314.

BY ADV. SRI.VARGHESE P.CHACKO

RESPONDENTS:

1. UNION OF INDIA, REP. BY
THE SECRETARY, MINISTRY OF RAILWAYS,
NEW DELHI.

2. THE DEPUTY CHIEF ENGINEER(CONSTRUCTION),
SOUTHERN RAILWAY, ERNAKULAM, COCHIN-16.

3. THE CHIEF ENGINEER (CONSTRUCTION),
SOUTHERN RAILWAY, THAIKADU,
THIRUVANANTHAPURAM-14.

BY ADV. SRI.ALEXANDER THOMAS, SC,RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 5697/07.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE LETTER DTD.9.3.00 BY R3.

P2. COPY OF THE DEMAND NOTICE DTD.13.5.06.

P3. COPY OF THE LETTER DTD.10.6.06 BY R2.

P4. COPY OF THE RECEIPT ISSUED BY R2, DTD.18.12.2002.

P5. COPY OF THE REPLY LETTER DTD.12.9.03

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///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).No.5697 of 2007

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Dated this the 9th day of August, 2007

J U D G M E N T

The petitioner is a contractor who has taken on contract certain works on behalf of the Railways. The petitioner is aggrieved by the alleged non-payment of bill amounts. Respondents have filed a counter affidavit, paragraph 6 of which reads thus:

> "6. It is respectfully submitted that the final Bill can be made only on completion of the work, and as per clause 48(1) of General conditions of Contract. Certificate for completion of works can be issued to the contractor by the Engineer-in-charge of work on fulfilling the contractual obligations. In continuation to issue of completion certificate as stated above the Final bill can be prepared, as per clause 51(1) of GCC for Final Payment. For arranging final payment the petitioner has to give a No Claim Certificate as envisaged in Clause 51(1), and has to return all the materials/make good any loss or damage caused to Railways. In this instant case the petitioner had not transported the Sleepers as envisaged in item No.25 of Ext.P.R-1 of the contractual Agreement, as such, the contractual obligations are incomplete. The petitioner contractor could have applied for offloading of item No.25, from the purview of the Contract Agreement as per the guidelines available in GCC. The petitioner contractor has not applied for it till date. Hence, the Completion Certificate cannot be issued, and the final measurement is yet to be recorded, which is to be done at the request of the contractor, and has to be done jointly by the Railways and the contractor. Moreover, the final measurement has to be done in the presence of the Petitioner contractor, at his request. Moreover, the contractor has to concur to the measurement, once it is taken. If the petitioner completes the balance work and returns the Railway materials with him, and fully cooperates in the various formalities for taking the final measurement, then the final bill can be issued to the Petitioner within four months, thereafter."

The counsel for the petitioner submits that the petitioner is prepared to abide by the said conditions. Accordingly, I dispose of this writ petition in terms of paragraph 6 of the counter affidavit filed by the respondents.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.